

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHARLES D. WATSON, II,  
and STACEY L. WATSON,

UNPUBLISHED  
June 12, 2001

Plaintiffs/Counter-Defendants-  
Appellees,

v

ROBERT KRZECZWOSKI,  
and CECILIA KRZECZWOSKI,

No. 216520  
Wayne Circuit Court  
LC No. 98-813281-CH

Defendants/Counter-Plaintiffs-  
Appellants.

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Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendants appeal of right from an order granting plaintiffs' motion for summary disposition with respect to defendants' counterclaim and plaintiffs' claim for injunctive relief. We affirm.

This case centers on the ownership of a vacated sixty-foot wide road that used to lie between plaintiffs' and defendants' properties. The road was abandoned in March 1997 after plaintiff presented to the township board a petition requesting such an action. Defendants had signed this petition in the summer of 1996. Defendants built a shed and a sidewalk on part of the property in the fall of 1996. Plaintiff's began the legal proceedings below by filing a complaint for trespass. Plaintiffs contended that the record established that the vacated road lies entirely within their property. Defendants then filed a counterclaim, arguing that under the doctrines of fraud, unjust enrichment, and promissory estoppel, one-half of the vacated road belonged to them. Defendants claimed that they signed the petition because plaintiffs assured them that the vacated road would be divided equally between the parties.

The trial court did not specify the basis of its grant of summary disposition to plaintiffs. However, because the record shows that the court relied on evidence other than the pleadings, we review the motion as having been granted under MCR 2.116(C)(10). *Gibbons v Caraway*, 455 Mich 314, 320, n 7; 565 NW2d 663 (1997); *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 633, n 4; 601 NW2d 160 (1999). This Court reviews decisions on motions for summary

disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

In order to sustain their claim of fraudulent misrepresentation, defendants must establish that (1) plaintiffs made a material representation, (2) the representation was false, (3) plaintiffs knew or should have known it was false when making the representation, (4) plaintiffs made the representation with the intention that defendants would act upon it, and (5) defendants acted in reliance on it and suffered damages as a result. *Novak v Nationwide Mutual Ins Co*, 235 Mich App 675, 688; 599 NW2d 546 (1999).

The alleged misrepresentation by plaintiffs was that the vacated road would be divided evenly between the parties if defendants signed the petition to abandon the road. Accepting the allegation as true that plaintiffs made the representation for purposes of a (C)(10) motion, we conclude that there is no genuine issue of fact that plaintiffs' promise was a promise to take an action in the future, and thus cannot support defendants' claim. *Eerdmans v Maki*, 226 Mich App 360, 366; 573 NW2d 329 (1997)(observing that "[f]uture promises are contractual and cannot constitute actionable fraud"). Therefore, we hold that the trial court properly dismissed defendants' counterclaim for fraudulent misrepresentation.

In order to sustain their claim of unjust enrichment, defendants must establish the (1) receipt of a benefit by plaintiffs from defendants, and (2) an inequity resulting to defendants because of the retention of the benefit by plaintiffs. *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). "In such instances, the law operates to imply a contract in order to prevent unjust enrichment." *Id.* We conclude that the grant of summary disposition was proper because defendants cannot establish the second element of their prima facie case.

Defendants signed the petition to have the road vacated in the summer of 1996. Defendants allege that the promise to equally divide the road was made by plaintiffs at that time. The road was abandoned by the township in March 1997. Defendants claim that plaintiffs had a survey of their property, including the vacated road, done in the fall of 1997. Defendant Robert Krzeczowski admitted in his deposition that the improvements to the property were made in the fall of 1996, *after* the alleged promise to divide the road was made by plaintiffs<sup>1</sup>

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<sup>1</sup> Defendant Robert Krzeczowski testified as follows:

(continued...)

Further, accepting defendants' allegation as true that plaintiffs became aware of their title to the entire road based on the 1997 survey, there is no issue of fact that defendants made the improvements before plaintiffs' knowledge of the true title. In addition, plaintiffs did not actually obtain legal title to their property until January 1998, and the road was not legally abandoned until March 1997. Therefore, defendants were proceeding at their own risk without legal right. For these reasons, we hold that it would not be inequitable for plaintiffs to retain any benefit related to defendants' improvements made on plaintiffs' property.<sup>2</sup>

Finally, in order to sustain their claim of promissory estoppel, defendants must establish (1) that plaintiffs made a promise, (2) that they should reasonably have expected to induce action of a definite and substantial character on the part of defendants, (3) which in fact produced reliance or forbearance of that nature, (4) in circumstances such that the promise must be enforced to avoid injustice. *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999). We conclude that defendants have failed to meet this burden.

Plaintiffs' alleged promise was no different than the statements made by township officials. Defendants in their counterclaim admit that the township told them that they would obtain half the road on abandonment. Plaintiffs were merely confirming what defendants had already been told regarding abandonment of the road. In any event, any reliance on the promise by defendants was not reasonable because when the alleged promise was made, plaintiffs had not yet obtained legal title to the property and no one had yet completed a survey or made any detailed inquiry of real estate documents. Additionally, we believe plaintiffs could not have reasonably expected defendants to build on the property before the road was actually abandoned and before plaintiffs had received legal title to the property. *Ardt, supra* at 692.

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(...continued)

Q. [S]ir, if you could tell me the first day that any work was done relative to the shed, the sidewalk, and the things surrounding the shed?

A. The shed was built around October, right around the date of the permit, right around that period, which is, I think, October 17<sup>th</sup>, 18<sup>th</sup>.

Q. Do you remember exactly what day the shed, first of all, what day was the shed building started?

A. Probably week prior to that.

Q. One week prior to what, sir?

A. October 17.

Q. Of 1996?

A. Yes.

<sup>2</sup> We note that plaintiffs requested that the improvements be removed.

Further, for the reasons stated above and those contained in our discussion regarding unjust enrichment, equity does not require that plaintiffs deed half the road to defendants. *Id.*

We also reject defendants' argument that summary disposition was premature because discovery had not yet concluded. "[S]ummary disposition is premature if granted before discovery on a disputed issue is complete. However, summary disposition is appropriate if there is no fair chance that further discovery will result in factual support for the party opposing the motion." *Mackey v Dep't of Corrections*, 205 Mich App 330, 333; 517 NW2d 303 (1994)(citation omitted). We believe that there is no such chance that further discovery will result in factual support for defendants' counterclaim.

Finally, based on our decision that defendants have no cause of action against plaintiffs, we conclude that the trial court's order granting plaintiffs' request for injunctive relief was proper.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy